

MISC. CRIMINAL APPLICATION NO. 5832 OF 1994.

Date of decision: 1.5.1996.

For approval and signature

The Honourable Mr. Justice R. R. Jain

Ms. Rani Advani & Ms. Susamma Varghese, advocate for petitioner.

Mr. J.V. Japee, advocate for respondents No.1 to 3.

Mr. S.R. Divetia, A.P.P., for respondent No.4-State.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

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May 1, 1996.

Oral judgment:

Aggrieved by the order of this Court dated 20.5.1994 (Coram: K.R. Vyas, J.) passed in Misc. Criminal Application No.2427 of 1994 releasing respondents No.1 and 2 on bail and order dated 28.4.1994 passed by the learned Sessions Judge, Sabarkantha at Himatnagar in Criminal Misc. Application No.223 of 1994 releasing respondent No.3 on bail, the present petitioner has preferred this application under Section 439 (2) of the Criminal Procedure Code for cancellation. It is alleged that respondents No.1, 2 and 3 are staying just opposite to the petitioner's house and are threatening her and children day in and day out with dire consequences and

force for compromise and thus it is alleged that the respondents No.1 to 3 have misused the liberty and violated terms and conditions imposed by Court while granting bail. It would be pertinent to note that the petitioner is wife of one Agarsinh Rathod, who died in the incident for which offence under Section 302 of IPC has been registered at C.R.No.I-115/94 with Himatnagar Town Police Station. It is true that order of cancellation of bail should not be passed in mechanical manner. As a cardinal rule, any such order of cancellation should be based on and supported by cogent, concrete and overwhelming circumstance. In my view, misuse of liberty and violation of terms and conditions imposed by Court while releasing on bail is nothing less than cogent, concrete and overwhelming circumstance enabling any court to cancel bail. But the petitioner has to satisfy the court about existence of such circumstance. In this case, except apprehension or bare allegation, nothing has been placed on record to establish that liberty has been misused and the respondents are guilty for violation of terms and conditions imposed by court. Consequently, in absence of any corroborating evidence mere allegation and apprehension cannot be the basis for cancellation of bail order. Similarly, mere allegation/apprehension cannot constitute special reason germane to cancellation. Therefore, in my view, the allegations made in the petition are not sufficient to recall and cancel the order of bail operating in favour of respondents No.1 to 3.

From the averments made in the petition, it clearly transpires that the petitioner is a widow having small children and is constantly under apprehension of threat from the respondents No.1 to 3. At this stage, I am not to resolve the controversy whether any such threat as alleged by the petitioner has been administered by the respondent. But even assuming that the allegations made are to be true and correct, the situation can be taken care of by imposing some conditions about reporting at the nearest police station at regular intervals. By imposing such conditions the respondents would be under the vigil and control of the Investigating Officer and would be able to keep check over their activities. Therefore, irrespective of merits of this matter it would be just and proper to impose some conditions to meet the ends of justice.

Consequently, respondents No.1 and 2, i.e., Karsinh Jagatsinh Parmar and Gulabsinh Jehsinh Parmar respectively, are directed to report at Himatnagar Police

Station, once in a week on every Monday between 11 A.M. to 5 P.M. till further orders. Similarly, respondent No.3, Samuben Jagatsinh Parmar, is directed to report at Himatnagar Police Station once in a month on every 1st Monday till further orders. In light of aforesaid directions, application stands disposed of. Rule made absolute accordingly.